

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FRANCISCO LOZADO,

Petitioner,

-against-

WARDEN ROBERT CRIPPS,

Respondent.
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DEBORAH A. BATTS, United States District Judge.

This matter is before the Court upon the December 17, 2010 Report and Recommendation of United States Magistrate Judge Theodore H. Katz (the "Report"). Judge Katz's Report recommends that Petitioner's Petition for a Writ of Habeas Corpus be denied with prejudice, that a certificate of appealability not issue, and that the Court certify that any appeal would not be taken in good faith. (Report at 2, 29-30.)

"Within fourteen days after being served with a copy [of a Magistrate Judge's Report and Recommendation], a party may serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2); accord 28 U.S.C. § 636(b)(1)(C). The district court may adopt those portions of the report to which no timely objection has been made, so long as there is no clear error on the face of the record. Wilds v. United Parcel Serv., Inc., 262 F.Supp.2d 163, 169 (S.D.N.Y. 2003). "[F]ailure to object timely to a magistrate's report

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operates as a waiver of any further judicial review of the magistrate's decision." Caidor v. Onondaga County, 517 F.3d 601, 604 (2d Cir. 2008) (quoting Small v. Sec. of HHS, 892 F.2d 15, 16 (2d Cir. 1989)). This rule applies to pro se parties so long as the magistrate's report "explicitly states that failure to object to the report within [fourteen (14)] days will preclude appellate review..." Small, 892 F.2d at 16.

Despite being advised by the Report of the procedure for filing objections, and despite being warned by the Report that failure to file objections would waive objections and preclude appellate review, (Report at 30), Petitioner has filed no objections to the Report. Nor has Respondent filed objections to the Report.

Having reviewed the Report, and finding no clear error on the face of the record, see 28 U.S.C. § 636(b)(1)(B), it is hereby ORDERED AND ADJUDGED that the Report and Recommendation of United States Magistrate Judge Theodore H. Katz, dated December 17, 2010, be and the same hereby is APPROVED, ADOPTED, and RATIFIED by the Court in its entirety. The Petition for a Writ of Habeas Corpus is DISMISSED with prejudice. Because Petitioner has not made a substantial showing of a denial of a federal right, no certificate of appealability shall issue. See 28 U.S.C. § 2253(c)(2); Lucidore v. N.Y. State Div. of Parole, 209

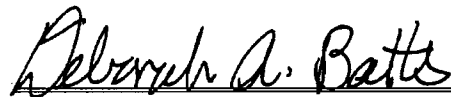
F.3d 107, 112 (2d Cir. 2000). The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith. See Coppedge v. United States, 369 U.S. 438, 445-46, 82 S.Ct 917, 921 (1962).

The Clerk of Court is directed to close the docket in this matter.

SO ORDERED.

Dated: New York, New York

July 28, 2011

A handwritten signature in cursive script, reading "Deborah A. Batts", written over a horizontal line.

Deborah A. Batts
United States District Judge